

REMARKS

Please reconsider the application in view of the above amendments and the following remarks. Applicant thanks the Examiner for courtesies extended during the telephone interview on September 4, 2008, and for carefully considering this application.

Interview Summary

An interview was conducted on September 4, 2008. Amended claim 1 was discussed. The Examiner indicated that amended claim 1 appeared to overcome the art of record. However, the Examiner reserves the right to conduct an updated prior art search upon receipt of this response.

Disposition of Claims

Claims 1-4, 7-11, and 13 are pending in the present application. Claims 1 and 8 are independent. The remaining claims depend, directly or indirectly, from the independent claims.

Claim Amendments

Claims 1 and 8 have been amended by this reply. No new matter is added by way of these amendments. Support for these amendments may be found, for example, in paragraph [0026] of the Specification.

Amendments to the Specification

Paragraph [0001] of the Specification has been amended to replace U.S. Patent Application numbers with U.S. Patent numbers as requested by the Examiner. No new matter is added by way of these amendments.

Rejections under 35 U.S.C. § 103

Claims 1-4, 7-11, and 13 are rejected under 35 U.S.C. § 103(a) as being unpatentable over “Fine-Grained Dynamic Instrumentation of Commodity Operating System Kernels”, University of Wisconsin, 2001 (“Tamches”), and in view of U.S. Patent No. 6,327,704 (“Mattson”). To the extent this rejection may still apply to the pending claims, the rejection is respectfully traversed.

MPEP § 2143 states that “[t]he key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in KSR noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit.” Further, when combining prior art elements, the Examiner “must articulate the following: (1) a finding that the prior art included each element claimed, although not necessarily in a single prior art reference, with the only difference between the claimed invention and the prior art being the lack of actual combination of the elements in a single prior art reference; ...” MPEP § 2143(A).

Claim 1 requires, in part, loading the original instruction into a scratch space, which is allocated on a *per-thread* basis. In contrast, Tamches only discloses that a single code patch and a single springboard, if necessary, are allocated when splicing an instruction. *See* Tamches, pages 55 and 61 (describing the dangerous race condition created). In other words, all threads branched by

the instruction will be directed to the same code patch (or to the same springboard). Further, Tamches discloses a “safer approach” where a counter reflects the *number* of threads currently in the same code patch. *See* Tamches, page 61. Thus, Tamches discloses that multiple threads may exist in the same code patch simultaneously. However, there is no disclosure of a scratch space allocated on a *per-thread* basis. In view of this, it is clear that splicing allocating a single code patch of Tamches is not equivalent to the scratch space allocated on a per-thread basis as recited in amended independent claim 1. Further, Mattson fails to supply that which Tamches lacks, as evidenced by the fact that the Examiner has relied on Mattson solely to teach limitations directed to using a dynamic backpatching determination through look-up table in dynamic instrumentation. *See* Office Action dated June 13, 2008, at pages 7-8.

In view of the above, Tamches and Mattson, whether considered separately or in combination, do not teach or suggest all the limitations of amended independent claim 1. Thus, amended independent claim 1 is patentable over Tamches and Mattson. Independent claim 8 contains similar subject matter to claim 1, and is patentable over Tamches and Mattson for at least the same reasons. Claims depending, directly or indirectly, from independent claims 1 and 8 are also patentable for at least the same reasons. Accordingly, withdrawal of this rejection is respectfully requested.

Conclusion

Applicants believe this reply is fully responsive to all outstanding issues and places this application in condition for allowance. If this belief is incorrect, or other issues arise, the Examiner is encouraged to contact the undersigned or his associates at the telephone number listed below. Please apply any charges not covered, or any credits, to Deposit Account 50-0591 (Reference Number 03226/417001; SUN040872).

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Respectfully submitted,

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